

**RESOLUTION NO. 15-006**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING APPROVAL TO THE CITY COUNCIL SITE DEVELOPMENT PERMIT NO. SD14-0016, CONDITIONAL USE PERMIT NO. UP14-0017, AND VARIANCE NO. VA14-0001, TO CONSTRUCT A 128-ROOM, FOUR-STORY HOTEL WITH SITE IMPROVEMENTS ON A 3.29 ACRE SITE, AND TO ALLOW THE HOTEL USE WITH A RESTAURANT SERVING ALCOHOL, A FLOOR AREA RATIO (FAR) AND BUILDING HEIGHT INCREASE, AND A DEVIATION FROM SETBACK REQUIREMENTS, LOCATED AT 1100 CADILLAC COURT, MILPITAS, CA 95035**

**WHEREAS**, on August 27, 2014, an application was submitted by Prime Group Construction, Inc. at 3045 Wilson Road, Bakersfield, CA 93304 to construct a 128-room four-story hotel with various site improvements on a 3.29 acre site, and to allow the hotel use with a restaurant serving alcohol, and a Floor Area Ratio ("FAR") and building height increase, and a deviation from setback requirements, at 1100 Cadillac Court, Milpitas, CA 95035 ("Project"). The property is located within the Industrial Park Zoning District (APN: 22-57-001); and

**WHEREAS**, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this Project is exempt under CEQA Guidelines Section 15332 (Infill Development Project); and

**WHEREAS**, on February 11, 2015, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2:** The Planning Commission finds the proposed Project is categorically exempt under the provisions of the California Environmental Quality Act (CEQA) Guideline Section 15332 (Infill Development Project) because the proposed Project meets the conditions described in that Section based on the Findings of Approval and subject to the Conditions of Approval attached hereto and incorporated herein. As further described in the staff report and in this Resolution:

- a) The proposed Project is consistent with the applicable General Plan Designation and all applicable general plan policies as well as with applicable Zoning Designation and regulations.

- b) The proposed development occurs within City limits on a Project site of no more than five acres substantially surrounding by urban uses.
- c) The Project site has no value as habitat for endangered, rare or threatened species.
- d) Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e) The site can be adequately served by all required utilities and public services.

The Air Quality and GHG Emissions report, Biological Resources report, and Phase I report prepared by various consultants (Illingworth & Rodkin, Inc., H.T. Harvey & Associates, and AEI Consultants respectively) indicate that the proposed Project will not have a significant effect on the environment. The Biological Resources report states that the Project site does not provide a suitable habitat for any special-status plant species and it would be unlikely for burrowing owls to locate on the site, concluding that the Project site has no value as a habitat for endangered, rare, or threatened species. However, the Biological Resources report also stated squirrels can locate on the site at any time and thus the applicant has incorporated those measures into the Project (provided as Attachment D to the Staff Report).

The City's transportation engineer performed an initial calculation to determine the peak-hour trips to be generated for this use, utilizing Institute of Transportation Engineers (ITE) standards as a resource. The results showed that the proposed use will generate less than one hundred (100) peak hour trips, thus not triggering the need for a Traffic Impact Analysis. In regards to the noise, the Project site is surrounded by industrial park parcels and as stated in the General Plan (Noise Element), the acceptable decibel (dB) for a lodging use is 65 dB while the acceptable decibel for office buildings is 70 dB, therefore, the Project will not result in any significant effects relating to noise. The Air Quality and GHG Emissions report prepared by Illingworth & Rodkin indicated that this Project will not have a significant impact on the environment with the implementation of the Construction Best Management Practices (BMP). The Project has incorporated these measures into the Project (Attachment D to the Staff Report). In regards to the water quality, the Project has incorporated stormwater control measures and Best Management Practices to protect the City's system from contamination.

Lastly, the proposed Project is consistent with the General Plan Designation, Zoning Designation, all applicable general plan policies and all zoning regulations as discussed herein and in the Staff Report and the Project site is 3.29 acres within City limits. The City's Utility Engineering Section has determined that the site can be adequately served by all required utilities and public services.

**Section 3:** Site Development Permit (Section XI-10-57-03(F)) - *The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD14-0016:*

- a) *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The Site Development Permit is required for the construction of the hotel and site improvements. As discussed in detail in the Staff Report and herein, the Project is consistent with this finding because the surrounding area is primarily comprised of Business Park developments. The front of the proposed hotel building is oriented inward to the site facing east towards the proposed onsite vehicle circulation and parking area. The rear of the building will face Cadillac Court and the side of the building will face Fairway Way. The surrounding buildings are primarily one to two story industrial offices. Although the Project proposes a total of four (4) stories, the proposed landscaping will assist with ensuring streetscape and foliage density consistency with the surrounding area. Based on the foregoing, the proposed Project is aesthetically harmonious with adjacent and surrounding development.

*b) The project is consistent with the Milpitas Zoning Ordinance.*

#### Development Standards

As discussed in detail in the Staff Report and herein, a hotel is conditionally permitted in an Industrial Park (MP) Zone. The Project conforms to the development standards required in the Industrial Park (MP) and Site and Architectural (S) Overlay Districts. The table below demonstrates how the Project is consistent with these development standards.

**Table 1: Summary of Development Standards**

	<b>Standard</b>	<b>Proposed</b>	<b>Complies?</b>
<u>Setbacks</u> (Minimum)			
Front	35'-0"	330'-9"	Yes
Street Side	35'-0"	42'-6"	Yes
Interior	10'-0"	3'-10"	Yes*
Rear	20'-0"	34'-6"	Yes
<u>Floor Area Ratio</u> (Maximum)	0.50	0.52	Yes**
<u>Building Height</u> (Maximum)	None, but special finding is required.	68'-11"	Yes***
<u>Landscaping</u>	Required front and street side yard area	Front and street side yard area	Yes
*With approval of a Variance			
**With approval of a Conditional Use Permit			
***If the Planning Commission can make the following findings: (1) the proposed development will generate low peak-hour traffic; and (2) will not create a dominating visual prominence. This is discussed in greater detail in the Findings of Approval section.			

The project complies with all development standards for the Industrial Park Zoning Designation with the exception of the interior setback, the Floor Area Ratio (FAR), and the maximum building height. The interior setback requirement for the Industrial Park Zoning District is a minimum of ten feet (10'-0"). The project proposes an interior setback of three feet and ten

inches (3'-10"). In order to allow for this interior setback, a Variance must be approved. This project is a candidate for a Variance because of an unusual and irregular property line.

The project proposes a Floor Area Ratio of 0.52 when the Industrial Park Zoning Designation has a maximum allowance of 0.50. The Floor Area Ratio can be increased through the approval of a Conditional Use Permit. In regards to the maximum building height, the Industrial Park Zoning Designation does not have a maximum building height requirement, however, any building that exceeds three (3) stories or thirty-five feet (35'-0") in height requires the approval of a Conditional Use Permit and special findings made by the Planning Commission.

Findings for the Variance and Conditional Use Permit are discussed further in Section 5, 6 and 7 of the Resolution.

#### Parking

The Project requires a total of 160 parking spaces based on the table below:

**Table 2: Summary of Parking Standards**

Use	# of rooms/# of seats/Sq. Ft.	Parking Ratio	Required Parking
Guest rooms	128 rooms	1 parking space per guest room	128 spaces
Meeting room	82 seats	1 parking space per 4 seats	21 Spaces
Board room	12 seats	1 parking space per 4 seats	3 Spaces
Employee parking	8 employees	1 per employee	8 Spaces
<b>Total number of parking spaces required</b>			<b>160 Spaces</b>
<b>Total number of parking spaces provided</b>			<b>164 Spaces</b>

*c) The project is consistent with the Milpitas General Plan.*

The General Plan designation for the subject property is Industrial Park, which is intended to accommodate research, professional, packaging and distribution facilities in a park-like setting, free from noise, odor and other such nuisances. The proposed Project is consistent with the General Plan in that it contributes to the City's economic development goals and provides the necessary public infrastructure improvements such as improving the Project frontage and improving the public streets on the Project frontage.

The Project is also consistent with the following Milpitas General Plan Policies:

- 1) 2.a-G-7: When considering development proposals, seek "community benefit", such as upgrading infrastructure facilities, construction new infrastructure facilities, and funding contributions to programs.

As a Condition of Approval (specifically #37(a)), the Project will improve the public street fronting the project site.

- 2) 2.a-G-9: The City should make land use decisions that improve the City's fiscal condition.

The Project will benefit the City's fiscal condition by providing an additional source of revenue through the Transient Occupancy Tax (TOT).

- 3) 2.a-G-11: Promote land use policy and implementation actions that improve the City's fiscal sustainability. Maintain and enhance the City's projected total net revenue through amendments made to the General Plan.

The Project will enhance the City's fiscal condition through collection of sales and property tax and the TOT.

- 4) 2.a-I-2: Promote development within the incorporated limits which acts to fill-in the urban fabric rather than providing costly expansion of urban services into outlying areas.

The Project site is a vacant lot located in a developed area of the City.

- 5) 2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.

The Project will provide economic benefit to the City by attracting visitors to Milpitas and collection of sales and property tax and the TOT.

- 6) 2.d-I-5: When considering development proposals that are consistent with the underlying land use designation, seek opportunities for infrastructure improvements that would benefit the proposed project as well as the adjacent development that would lessen the burden on the overall tax base.

The Project will improve the project frontage through planting of landscaping and public street improvements.

- 7) 3.b-I-1: Require new development to pay its share of street and other transportation improvements based on its impacts.

The Project will pay a fair share of the Calaveras Boulevard Widening Fee.

- 8) 3.d-I-12: Design streets to include detached sidewalks with planting strips or wider, attached sidewalks with tree-wells to encourage pedestrian use and safety, as well as to remove barriers and increase accessibility.

The Project proposes to create a four and a half (4'-0") strip of new landscape parkway planter buffering the pedestrian from the public street.

- 9) 3.d-I-16: Include evaluation of bicycle facility needs in all planning applications for new developments and major remodeling or improvement projects.

The Project proposes a bicycle rack which can accommodate up to eight (8) bicycles.

10) 4.d-G-4: Mitigate the effects that land development can have on water quality.

The Project will comply with the stormwater control requirements by proposing fourteen (14) bio-retention areas on-site.

11) 4.d-G-6: Promote conservation and efficiency in the use of water.

The Project proposes landscaping which all have low to moderate water usage needs.

12) 5.b-I-1: Ensure that new construction or substantial improvements to any existing structure result in adequate protection from flood hazards. New non-residential development locate the lowest floor, above the base flood elevation or incorporate flood-proofing and structural requirements.

The Project proposes to have a finished floor at 13.3, which meets the requirements required by the City.

**Section 4: Conditional Use Permit (Section XI-10-57.04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP14-0017:**

*a) The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed hotel and restaurant use will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare in that it is designed to be compatible with and strengthen the identity of the surrounding Business Parks. The hotel use will serve the area by providing a location for overnight accommodations for business and visitor travel. As conditioned, the Project will ensure public health and safety by providing a surveillance system and recordings made available to the Police Department and adequate lighting standards to ensure high visibility.

The applicant is requesting a Type 70 On-Sale General Restrictive Service which authorizes the sale or furnishing of beer, wine and distilled spirits for consumption on the premises to the establishment's overnight transient occupancy guests or their invitees. This license is normally issued to "suite-type" hotels and motels, which exercise the license privileges for guests' "complimentary" happy hour. Minors are allowed on the premises.

The sale of alcohol in the State of California is regulated by the Alcoholic Beverage Control Act (California Business and Profession Code Sections 23000-25762). The California Department of Alcoholic Beverage Control is required to deny an application for a license if issuance of the license would result in or add to an undue concentration of licenses in a particular area, unless

the local governing body finds that it would serve the public convenience or necessity. An undue concentration is defined under Business and Profession Code Section 23958.4 as an area where: (a) there is a crime reporting district that has a 20% greater number of reported crimes than the average of all crime reporting districts in the jurisdiction or (b) the ratio of retail licenses of the type applied for, to the population in the census tract or census division exceeds the ratio for the county in which the applicant premises are located.

According to the Department of Alcohol Beverage Control, the project does not fall within in an undue concentration area for liquor licenses. The project is located in Census Tract No. 5045.06 which authorizes three (3) off-sale permits (off-site consumption) and seven (7) on-sale permits (on-site consumption). Current there are four (4) Type 41 On-Sale Beer and Wine (Restaurants) and two (2) Type 20 Off-sale Beer and Wine (Package Stores). Staff has included the following conditions to ensure public health and safety:

- Responsible Alcohol Training - Permittee shall be solely responsible and liable for ensuring that all employees receive "Responsible Alcoholic Beverage Service" training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for copy and inspection upon City request. (P)

Alcoholic Beverage Control Licensing - Permittee shall at all times comply with all applicable State laws applicable to the sale of alcohol including any California Department of Alcoholic Beverage Control licensing requirements for the sale of alcohol. (P).

*b) The proposed use is consistent with the Milpitas General Plan.*

As discussed above, the Project is consistent with the Milpitas General Plan.

*c) The proposed use is consistent with the Milpitas Zoning Ordinance.*

As described above, the proposed Project is consistent with the Milpitas Zoning Ordinance.

**Section 5: Conditional Use Permit (Section XI-10-57.04(F)(2)) and Section XI-10-57.04(c))– The Planning Commission makes the following additional findings based on the evidence in the public record in support of Conditional Use Permit No. UP14-0017 relating to increased height:**

- a) The project exhibits exceptional architecture and aesthetic merit to warrant the excess height.*

Although the Industrial Park Zoning Designation does not have a maximum height requirement, an additional finding must be made by the Planning Commission if the proposed development is greater than three (3) stories or thirty-five feet (35'-0") in height. The proposed roof height for the Project is approximately forty-seven feet tall (47'-0") and the front parapet is approximately fifty-five feet and eleven inches (55'-11"). The rear tower elements range from fifty-eight feet and one inch (58'-1") to sixty-eight feet and eleven inches (68'-11"). To ensure that the proposed

hotel will reflect high-quality material and exceptional architecture, the Project is conditioned (Condition #17) to revise and submit building elevations to reflect high quality material, finishes, and articulation prior to issuance of any building permit. The Project is also conditioned to provide the Planning Director with a proposed color palette for the building, to incorporate additional cornice treatment to provide consistency, for the applicant to submit design alternatives for the rear tower elements, and to ensure that the window foam trim will protrude a minimum of one to two inches (1"-2") to create a recession to provide for greater architectural interest.

- b) Any excess height will not be detrimental to the light, air or privacy of any other structure or use currently existing or anticipated.*

For the Planning Commission to grant the increase in building height, the Planning Commission must find make this finding. The front of the proposed hotel building is oriented inward to the site facing east towards the proposed onsite vehicle circulation and parking area. The rear of the building will face Cadillac Court and the side will face Fairway Way. The project site is a corner property which has public street frontage on Fairview Way and Cadillac Court. The site design and the excess height will not be detrimental to the light, air or privacy of any other structure or use because the proposed hotel building is located at least thirty (30'-0") feet away from a structures.

**Section 6: Conditional Use Permit (Section XI-10-2.03) – The Planning Commission makes the following findings based on evidence in the public record in support of Conditional Use Permit No. UP14-0017 relating to increased Floor Area Ratio:**

- a) The proposed development will generate low peak-hour traffic.*

The project is proposing an increase in the Floor Area Ratio (F.A.R.) from 0.50 to 0.52. The maximum allowed FAR in the Industrial Park zoning designation is 0.50. Due to this increase, the Planning Commission must find that the proposed development will generate low-peak hour traffic. The project is consistent with this finding because based on the City's Traffic Engineer's assessment and reviewing the standards set by the Institute of Transportation Engineers (ITE), the proposed project will not generate more than one hundred (100) peak hour trips. A peak hour trip is defined as the one-hour period of time with the highest volume of traffic. The peak hour trips generated by the hotel is lower than the surrounding existing industrial uses and the peak hour trips generated fall in line with the Industrial Park zoning designation.

- b) The proposed development will not create a dominating visual prominence.*

As discussed in the Project Analysis section of the staff report, the Planning Commission must make this finding in order to grant the increase in the FAR through the Conditional Use Permit. The front of the proposed hotel building is oriented inward to the site facing east towards the proposed onsite vehicle circulation and parking area. The rear of the building will face Cadillac Court and the side will face Fairway Way. Although the proposed project is approximately sixty-eight feet (68'-0") in height (measured from the parapet height), the project is proposing compatible massing, detail, materials and colors compatible with the surrounding business park.



In addition, a variety of landscaping is included to compliment the proposed building and site character. The project landscaping will assist with softening the hardscape. The project proposes to plant trees and various shrubs and groundcover all along the Cadillac Court and Fairview Way frontage which will assist with softening the building and the parking lot.

**Section 7: Variances (Section XI-10-57.06(F)(1)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Variance No. VA14-0001 relating to setback requirements:**

- a) *Due to special circumstances applicable to the subject property including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under identical zone classifications.*

The Project is requesting a Variance for an exception to the setback requirements set aside in the Industrial Park Zoning Designation. The interior side setback requirement for the Industrial Park Zoning Designation is ten (10'-0") feet. The Project proposes a side setback distance of three feet and ten inches (3'-10") due to an existing irregular property line that exists for the site (shown on Sheet A1.0 of the project plans). The proposed project is consistent with this finding because the irregular property line is not evident in the way the property will be constructed and landscaped and poses no visual or setback impact to the adjacent property landscape and shared driveway.

- b) *The granting of the variance is necessary for the preservation of substantial property right possessed by other property in the same vicinity and zone and otherwise denied the subject property.*

The Project is consistent with this finding because without the approval of the variance for the purpose of granting a three foot and ten inches (3'-10") side setback, the proposed Project will not be able to use this area as a self-retaining area for stormwater quality control due to the irregular property line discussed above.

- c) *The required conditions of approval assure that the adjustment authorized will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity subject to the same zoning regulations.*

The Project is consistent with this finding because as mentioned before, the irregular property line is only present on the project site when reviewing the surrounding parcels within this area of the City. The property owner is in communications with affected property owners to discuss the off-site improvements (landscape improvements, sidewalk improvements, removal of existing curb etc.) and possibly pursuing a lot line adjustment. If the affected property owners consent to a lot line adjustment, then the irregular property line will be straightened out.

- d) *The granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

The granting with the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity because the three foot ten inches (3'-10") setback will not be located within twenty feet (20'-0") of the adjacent building. The Project is consistent with this finding because the proposed project is intending to improve the shared access driveway area located off Cadillac Court and will not inhibit or prohibit improvements in the vicinity. Currently, the site has a driveway which ends into deceased vegetation. The Project proposes to improve this area by adding new landscaping and a curb to contain the landscaped area.

- e) *The granting of the variance is consistent with the General Plan and the intent of this title.*

As discussed in detail in the Staff Report and herein, the Project is consistent with the General Plan and the intent of this title.

**Section 8: Supplemental Water Use Restrictions (Section VIII-6-5.00) – Urgency Ordinance (240.2) Exception Request relating to the use of potable water for irrigating new landscaped areas and for decorative features, swimming pools/ponds:**

On August 26<sup>th</sup> 2014, the City Council adopted Emergency Ordinance 240.2, which implemented additional water use restrictions. The Ordinance states that the use of potable water for the installation for new landscaping, decorative fountains and new swimming pools is prohibited (Section 5.03-5.06). However, the Ordinance allows exceptions to be granted at the discretion of the City Council (Section 5.08). Staff is in support of this exception request because the area is not served by reclaimed water and therefore must use potable water for all irrigation, decorative water features, and swimming pools.

**Section 9:** The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 15-006 recommending that the City Council approve Site Development Permit No. SD14-0016, Conditional Use Permit No. UP14-0017 and Variance No. VA14-0001 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on February 11, 2015.

  
Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on February 11, 2015 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal	✓			
Lawrence Ciardella	✓			
Hon Lien	✓			
Rajeev Madnawat	✓			
Ray Maglalang	✓			
Zeya Mohsin (Alternate)				
Demetress Morris	✓			
Gurdev Sandhu	✓			

EXHIBIT 1

**CONDITIONS OF APPROVAL FOR HOLIDAY INN SUITES  
SITE DEVELOPMENT PERMIT NO. SD14-0016, CONDITIONAL USE PERMIT NO.  
UP14-0017, AND VARIANCE NO. VA14-0001 TO CONSTRUCT A 128-ROOM, FOUR-  
STORY HOTEL WITH SITE IMPROVEMENTS ON A 3.29 ACRE SITE, AND TO  
ALLOW FOR THE HOTEL USE, RESTAURANT WITH ON-SITE CONSUMPTION OF  
ALL TYPES OF ALCOHOL, AND AN INCREASE IN THE FAR, AND FOR A  
DEVIATION FROM THE SETBACK REQUIREMENTS**

**General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This Site Development Permit No. SD14-0016, Conditional Use Permit No. UP14-0017, and Variance No. VA14-000 (collectively "Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Division.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to the City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to the City. There is no vesting of any fees or charges with the adoption of this Resolution.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever

which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on February 11, 2015 in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. (P)

16. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. (ALL)

### **Project Specific Conditions**

#### *Site Development Permit*

17. Architectural Elevations. Prior to issuance of any building permit, the Permittee shall revise building elevations to reflect high quality material, finishes, and articulation. Such revisions to the building architecture and materials are subject to Planning Director review and approval and includes the following:

- a. Building Color Palette and Texture. Prior to building permit submittal, the Permittee shall provide the Planning Director with a proposed color palette for review and approval. The color palette shall include proposed colors, material and texture (if applicable) of the building, porte-cochere, awnings and window frame color. All stucco finishes shall be a smooth sand finish (20/30 grade or smoother). Samples shall be provided upon request. All materials, colors, and finishes shall be subject to Planning Director approval prior to submittal for any building permit. **(P)**
  - b. Cornice Treatment. Cornice treatment shall be incorporated throughout the exterior of the building to ensure consistency. **(P)**
  - c. Foam Band. The foam band shall be incorporated throughout the exterior of the building to provide symmetry. **(P)**
  - d. Tri-Tower Element. Prior to building permit submittal, Permittee shall submit design alternatives for the colors, textures and materials for the proposed tri-tower elements facing Cadillac Court for review and approval by the Planning Division. The tower elements shall be fully wrapped. The width for the reduced tower element facing Cadillac Court shall be a minimum of seven (7'-0") feet to ensure symmetry with the more prominent tower element. **(P)**
  - e. Window Trim. The window foam trim shall protrude a minimum of one (1) to two (2) inches out.
18. Lighting Plan. During building permit submittal, Permittee shall submit a lighting and iso-illumination plan that shall demonstrate 1) safe and adequate lighting of the project site and; 2) lighting is contained and does not spill over onto adjacent properties or create unwanted glare. Permittee shall provide detail, elevations and manufacturer's specifications on proposed light fixture for ground lighting, pedestrian scaled lighting (light bollards), light standards, and wall sconces subject to Planning Director approval. Proposed light fixtures shall be high quality and complement the architectural style of the building. **(P)**
  19. Sidewalks. The cross-section for Cadillac Court and Fairview Way shall be four and a half feet (4'-6") wide landscape including face-of-curb, a linear six feet (6'-0") wide sidewalk, and landscaping back of Right-Of-Way. Sidewalk will be linear (parallel to street), as feasible and subject to Planning Director approval. **(P)**
  20. Improvements on Adjacent Property. Permittee shall contact all applicable property owners to the south of the project site to inform them and obtain permission for the proposed off-site improvements (i.e. landscape improvements, sidewalk improvements, removal of existing curb, etc.) **(P)**
  21. Backflow Preventers. All backflow preventers shall be painted a color that minimizes the visual prominence and the color shall be subject to Planning Division approval. **(P)**
  22. Equipment Screening. All rooftop equipment shall be adequately screened from the parking lot areas and the public street. All ground mounted equipment shall be adequately screened, if feasible, and subject to the Planning Division review and approval. If the screening is proven infeasible as solely determined by Planning Director, then all ground

mounted equipment and surrounding bollards (if any) shall be of design and color that will minimize visual impact. (P)

23. Signage. Signage shall not be part of this approval and shall be applied for under a separate City permit or approval. All proposed signage shall also be subject to Traffic Engineering review and approval. (P)
24. Landscaping. All approved landscaping shall be permanently maintained and replaced like-for-like or substantially similar plant material as necessary to provide a permanent, attractive and effective appearance. (P)
  - a. Street Trees. The Marina Strawberry Tree Single Trunk shown as street trees shall be replaced with twenty-four inch (24") box Brisbane Box Trees (*Lephostemon Confertus*).
25. Handicap Striping. The "no parking" stripe proposed on the south end of the project site shall be continuous to match up to the "no parking" strip on the adjacent parcel. (P)
26. On-Site Utilities. During building permit issuance, a detailed landscape plan shall be submitted and approved by the Planning Division that includes the following: location and screening of all transformers and utility devices including backflow preventers. Utilities shall be fully screened.
27. Outdoor Furniture Maintenance. Any outdoor furniture will be reasonably maintained and replaced if necessary. (P)
28. Climate Action Plan Compliance. Prior to issuance of any building permit, the Permittee shall include in its building plan submittal and shall also construct or implement the following as part of the Project:
  - a. Pre-wired for solar photovoltaic systems.
  - b. Provide exterior electrical outlet for gardening equipment.
  - c. Implement Transportation Demand Management Program for employees. (P)

#### **Conditional Use Permit**

29. Responsible Alcohol Training. Permittee shall be solely responsible and liable for ensuring that all employees receive "Responsible Alcoholic Beverage Service" training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for copy and inspection upon City request. (P)
30. Alcoholic Beverage Control Licensing. Permittee shall at all times comply with all applicable State and other laws relating in any way to the sale of alcohol including any California Department of Alcoholic Beverage Control licensing requirements for the sale of alcohol. (P).
31. Security Video Surveillance System. Prior to final building inspection for any hotel unit, Permittee shall install video surveillance cameras to monitor and provide complete coverage of the subject property including parking areas, common areas, driveways, hallways, lobby area, elevators and stairwells. Security cameras shall be capable of



recording daytime and nighttime activities. The resolution of the surveillance cameras shall be 720p or better. Surveillance recordings shall be retained for a minimum of thirty (30) days and subject to immediate review and copy by any law enforcement upon request. **(PD)**

32. Surveillance Equipment Operation. Surveillance equipment shall not be inoperable at any time, other than when being serviced by a qualified professional surveillance equipment technician for no more than two (2) days at any given time and no more than six (6) days within any 365 day period. **(PD)**
33. Guest Check-in Procedure. At the time of check-in, hotel staff members shall obtain and retain a valid government-issued identification number from all adult hotel guests. Implement clear check-in policies and provide proper training for desk clerks on guest screening and security procedures. Hotel staff members shall also obtain and retain the following for registered guests:
  - a. Name, address and phone number
  - b. Vehicle information, not limited to the make, model, and license plate number of the vehicle if feasible.
  - c. The register record shall be maintained for a period of not less than two (2) years and may be inspected by the City upon request or a copy shall be provided to the City upon request. **(PD)**
34. Visitor Behavior. Prominently post notices and signs that clearly outline appropriate guest and visitor behavior to dissuade guests from engaging in illegal activities. **(PD)**
35. Public Improvements: Prior to any building permit issuance, Permittee shall obtain design approval and bond for all necessary public improvements along Cadillac Court and Fairview Way including but not limited to the following:
  - a. Utility Relocation: Underground utilities (such as joint trench conduit, utility boxes, etc.) shall be relocated and adjusted to grade to accommodate the approved frontage layout.
  - b. Right of Way. The Permittee shall dedicate all necessary rights-of-way and public easements to the City for the proposed public sidewalk improvements and utilities to the satisfaction of the City Engineer. The proposed frontage (4.5' wide landscaping and 6' wide sidewalk) shall be contained within the right-of-way. The Permittee shall provide a 10' PSUE behind the right-of-way.
  - c. Occupancy: All public improvements shall be installed and accepted prior to the issuance of the first Certificate of Occupancy (temporary or final).
  - d. City Standards: All design and construction of public and private improvements shall be in compliance with City guidelines and standard drawings.
  - e. Curb and Gutter Replacement: Permittee shall replace all damaged curbs and gutters within the project limits. **(E)**
36. Onsite Improvements.
  - a. Flooding Mitigation: Prior to any building permit issuance, the Permittee shall provide mitigation for all increases in Base Flood Elevation (BFE) greater than .4' as shown on the projects flood study by Schaaf & Wheeler dated January 12, 2015.

Mitigation may include re-grading of the site, curb and gutter replacement, minor site flood walls or any other means to reduce the BFE impact. Permittee shall submit an updated flood study to reflect the mitigated BFEs.

- b. Site Improvement Plan Set. Prior to any building permit issuance, the Permittee shall submit a complete site improvement plan set, including but not limited to a separate plan sheet for floodplain management, storm water control, emergency vehicle access, and solid waste handling.
- c. Utility Meter Layout. The Permittee shall include a detail in the Site Improvement plan set showing the size, dimensions, and layout of all utility meters and associated appurtenances. The layout design shall comply with all separation and access requirement.
- d. Floodproofing. The Permittee shall provide a separate floodproofing report describing the floodproofing for all structures that are not removed from the Special Flood Hazard Area. The report shall demonstrate compliance with NFIP Regulations and technical bulletins. The report shall include the floodproofing of mechanical equipment, elevator shaft and equipment, and utilities. Floodproofing details shall also be included in the site improvement plan set and on the floodplain management sheet. (E)

37. Transportation & Traffic Engineering:

- a. Street Surfacing. Permittee shall wedge grind and apply 1.5" AC overlay on full width of Fairview Way from Cadillac Court to the end of property driveway on Fairview Way including the intersection of Cadillac Court and Fairview Way with overlay ending at the intersection curb return along Cadillac Court. Restripe street and reconstruct all non-compliant curb ramps at all corners of the intersection of Cadillac Court and Fairview Way to the most current ADA standard. (E)

38. Utilities: The Permittee shall comply with the following:

- a. Separate Connections: Project plans currently show connection to adjacent private system for, water, sewer and storm. Project shall have separate connection for water, sewer, and storm independent from the adjacent property's private utilities, provided Permittee may be allowed to connect certain uses (e.g. pool area) to the private sewer system with the written consent of the private utility owner and operator. The Permittee shall submit the written consent of private utility owner prior to any building permit issuance.
- b. Water System. Project site shall be served by SFPUC Zone 1. A Water Supply Assessment is not required.
- c. Water Service. The project shall have separate water meters for domestic, irrigation, and fire service. Permittee shall provide backflow protection on all water connections, including fire services, in accordance with City guidelines and USC Manual of Cross Connection Control. Water meters and backflow devices shall be located behind the sidewalk in the Public Service Utility Easement. Permittee is

- alerted that on-site pumping to upper floors may be required. Project shall install parallel meters for reliability. On-site pumping is necessary to serve upper floors.
- d. Multi-Story Buildings: The multi-story buildings proposed require water supply pressures above that which the City can normally supply. Additional evaluations by Permittee are required to assure proper water supply (potable or fire services). Prior to any building permit issuance, Permittee shall submit an engineering report detailing how adequate water supply pressures will be maintained.
  - e. Coordination with Landscaping Plans. Coordinate utility plans with landscape and hardscape plans to insure no conflicts and provide separation between deep-rooted plantings and underground utilities.
  - f. Landscaping: Planting of landscape may be deferred due to the drought and Permittee shall either request a waiver from the City Council or post a bond.
  - g. Construction Water: Due to the water supply emergency, the City Council adopted Ordinance 240.2, which prohibits use of potable water for construction activities, filling new swimming pools, and establishing new landscape. Permittee may use recycled water for construction activities and may be required to submit a bond for deferred landscaping.
  - h. Grease Interceptor. Provide a grease interceptor for the project. The proposed grease interceptor shall be located outside of the City right of way and easement area.
  - i. Solid Waste Handling. This project may use front load bins provided that a supplemental report is submitted to confirm the trash and recycling generation rates assumed on the entitlement plan set is accurate. Permittee shall provide sufficient facilities for on-site storage and collection of solid waste and recyclables. Permittee shall provide a Solid Waste Handling Plan showing how materials will be transferred from the residential units to the trash enclosure/external collection point. The Solid Waste Handling Plan shall also address other requirements, such as weekly collection setout and property management responsibility for litter control. Permittee shall procure sufficient service frequency. Permittee to provide a plan showing solid waste setout locations that do not block parking spaces. All solid waste collection facilities shall comply with City guidelines. The solid waste enclosure shall be sized to include the tallow bin.
  - j. Tallow Account: Project shall subscribe to a tallow account. (E)

## FEES

39. Development Fees: Permittee shall submit the following items with the building permit application and pay the related estimated fees prior to building permit issuance:
- a. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire
  - b. Water Service Agreement(s) for water meter(s), detector check(s), and double check detector assembly.
  - c. Storm water connection fee of \$21,562 per acre.
  - d. Water, sewer and treatment plant fees will be calculated at the time of building plan check submittal.
  - e. Calaveras Blvd Widening Traffic Impact Fee of \$ 803 per thousand square feet of Retail Development (in 2009) prior to building permit issuance. Fee shall be adjusted per ENR index rate at the time of building permit issuance.

Contact the Land Development Section of the Engineering Division at (408) 586-3328 to obtain the form(s). *The above fees are preliminary estimates and subject to change.* There is no vesting of the fees with the adoption of this Resolution. (E)

40. Building Permit Automation Fee: Prior to any building permit issuance, Permittee shall pay all applicable development fees, as determined by the City Engineer in accordance with the most current approved fee schedule adopted by the City Council, including but not limited to, connection fees (water, sewer and storm), Transit Area impact fee, plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. (E)
41. Community Facilities District (CFD) Annexation: Prior to any building permit issuance, Permittee shall submit an executed consent to annex the subject property into CFD 2005-1 and shall agree to pay the special taxes levied by CFD 2005-1 for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized prior to any building permit issuance, whichever occurs first. Permittee shall comply with all rules, regulations, policies, and practices established by State Law and by the City with respect to the CFD including, without limitation, the requirements for notice and disclosure to future owners and residents. (E)

## CONSTRUCTION

42. Improvement Plans: Prior to any building permit issuance, Permittee shall obtain design approval and bond for all necessary public improvements as shown on the entitlement approval and in compliance with City standards and regulations, including but not limited to the following:
- a. Removal and installation of new curb, gutter, and sidewalk, median modification or installation, signage and striping, street lights, street trees, fire hydrants, bus stop, and storm, water, and sewer service installation.
  - b. All improvements plans shall be prepared using Vertical Datum of 1988 (NAVD 88). The specific City benchmark used for the project shall be indicated on the cover sheet of each improvement plan set.
  - c. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital copy of the Record Drawings AutoCAD and GIS format upon completion of improvements to the satisfaction of the City Engineer.
  - d. Permittee shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. (E)

43. Initial Acceptance: All improvements must be installed in accordance with the City of Milpitas standard drawing and specification, and shall be constructed to the City Engineer's satisfaction and accepted by the City prior to issuance of any final certificate of occupancy of any hotel unit. (E)
44. Utility Undergrounding: Prior to issuance of the first Certificate of Occupancy (temporary or final), Permittee shall underground all existing wires and overhang utilities and remove all related poles within the proposed development and along all street frontages. All proposed utilities within the subdivision shall also be undergrounded. The improvement plans shall show all existing utilities within and bordering the proposed development, and clearly identify the existing PG&E wire towers and state wire voltage. All utility vaults, boxes, cabinets, and pedestals shall be identified and labeled on the improvement plans. Above ground utility (except electrical high-voltage transmission lines) facilities shall be underground, relocated, or screened to the satisfaction of the City Engineer and the Planning Director. (E)
45. Joint Trench Relocation: The joint trench shall be relocated in the field, if necessary, to accommodate the approved street layout (sidewalks, trees, streetlights, etc.) to the satisfaction of the City Engineer and the Planning Director. All joint trench structures (vaults, boxes, cabinets, etc.) shall be adjusted to the final grade. (E)
46. Encroachment Permit: Prior to any work within the public right of way or City easement, Permittee shall obtain an encroachment permit from City of Milpitas Engineering Division. Prior to installing offsite improvements, Permittee shall obtain an encroachment permit from the City of Milpitas and all necessary encroachment permits from other affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Santa Clara Valley Water District, Santa Clara County road and Airport Department, and Santa Clara Valley Transportation Agency (VTA). Copies of any approvals or permits shall be submitted to the City of Milpitas Engineering Division as a part of the encroachment permit review. (E)
47. Agency Approval: It is the responsibility of the Permittee to obtain any necessary encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Santa Clara Valley Water District and Caltrans. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division, prior to building permit issuance. (E)
48. Construction Schedule: Prior to start of any construction, Permittee shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, and construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related

concerns. Permittee shall coordinate their construction activities with other construction activities in the vicinity of this project. Permittee's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (E)

49. Demolition: All utilities shall be properly disconnected before the building can be demolished. Show (state) how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped at main line in the street if the water meter is not to be used. The sanitary sewer shall be capped at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used. (E)
50. Maximum Slopes: All slopes adjacent to public sidewalks and streets shall be designed to a maximum grade of 4:1 slope. The grading design shall also provide a 1' flat bench at the top and bottom of the slope adjacent to the public sidewalks, streets, or pathways. (E)
51. Tree Removal Permit: In accordance with COMC Chapter 2, Title X (Ord. 201), Permittee may be required to obtain a permit for removal of any existing tree(s), not previously permitted for removal. Contact the Public Works Department at (408) 586-2600 to obtain the requirements and forms. (E)
52. Underground Service Alert (USA): Permittee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hours prior to construction for location of utilities. (E)

## **FLOODPLAIN MANAGEMENT**

53. Special Flood Hazard Area: The proposed development is located within the Special Flood Hazard Area (SFHA), and, therefore, shall comply with the National Flood Insurance Program (NFIP) Title 44 of the Code of Federal Regulations and the City of Milpitas (City) Flood Plain Management Regulations, City of Milpitas Code (COMC) Title XI Chapter 15. Prior to any building permit issuance, Permittee shall obtain a Conditional Letter of Map Revision (CLOMR) or a Conditional Letter of Map Revision based on Fill (CLOMR-F) from the Federal Emergency Management Agency (FEMA), conditionally approving the revised floodplain or the removal of the development from the SFHA. Permittee shall also obtain a Letter of Map Revision (LOMR) or a Letter of Map Revision based on Fill (LOMR-F) and shall provide all elevation certificates prior to final building inspection or issuance of certificate of occupancy for any portion of the development. The proposed grading plan shall comply with the established BFE as determined in the final flood study report, the approved CLOMR or CLOMR-F, or the official FEMA Federal Insurance Rate Map (FIRM). (E)
54. Floodplain Management Ordinance: Per Chapter 15, Title XI of Milpitas Municipal Code (Ord. No. 209.4) the lowest floor elevation (finished floor) of each structure shall be at

least one foot above the Base Flood Elevation (BFE). The structure pad(s) shall be properly designed by a registered civil engineer and compacted to meet FEMA's criterion. In addition, the pad(s) shall extend beyond the building walls before dropping below the base flood elevation, and shall have appropriate protection from erosion and scour. All electrical equipment, mechanical equipment, and utility type equipment servicing the structure shall be located above the BFE, or shall be flood proofed, and shall be constructed to prevent damage from flooding events. Any trailers, modular buildings, or pre-manufactured dwelling units located on this site for periods of time greater than one year, shall be adequately anchored to resist flotation, collapse and lateral movements per Floodplain Management Ordinance. Permittee's civil engineer shall complete and submit several FEMA Elevation Certificates to the City at different stages of the construction. Flood insurance is required for any construction that is financed with government backed loans. (E)

55. Flood Study: Prior to any building permit issuance, Permittee shall submit a Flood Study for the project demonstrating, to the satisfaction of the City Engineer, that the proposed development has NO adverse impact to the surrounding flood plain within the SFHA and to flood carrying capacity of the area. The study should include cumulative effects of existing and proposed developments demonstrating the combined effects will not increase the water surface elevation of the Base Flood (BFE) more than one foot at any point. For the AO Flood Zone, the flood study is required to establish the BFE, and set the building elevation accordingly. The flood study shall be consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. (E)

56. Drainage Study: Prior to any building permit issuance, Permittee shall submit a final grading plan and hydrologic/hydraulic study prepared by a registered Civil Engineer, consistent with the approved CLOMR. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and Permittee shall satisfy the conclusions and recommendations of the approved drainage study. (E)

57. Elevation Certificates: Permittee shall submit an elevation certificate for each lot or structure that is to be removed from the SFHA:

- a. Prior to any grading permit issuance, based on an approved grading plan. This elevation certificate shall contain all proposed grades applicable and shall be required in order to receive community acknowledgement for the CLOMR or CLOMR-F application.
- b. Prior to building foundation pour, based on finished formwork while the building is under construction. If Permittee intends to apply for a LOMR or LOMR-F prior to finished construction, this elevation certificate shall be submitted after the foundation pour and shall be based on existing finished floor and adjacent grades. It shall be required in order to receive community acknowledgement for the LOMR or LOMR-F application.

- c. Prior to occupancy of each building or structure, based on finished construction. This elevation certificate shall contain all required finished grades and shall be based on existing information.
- d. Prior to final occupancy, Permittee shall submit a binder containing all the elevation certificates produced for the each phase of the project. **(E)**

## CLEAN WATER

58. Construction Storm Water Quality: Permittee shall comply with the requirements of the National Pollution Elimination Discharge System (NPDES) permit as administered by the California State Water Resources Control Board (State Board) and the San Francisco Bay Regional Water Quality Control Board (Regional Board). Prior to the issuance of any building, demolition, or grading permit, Permittee shall submit an Erosion and Sediment Control Plan (Erosion Control Plan) as a part of the improvement plan submittal. The erosion control plan shall show all construction best management practices (BMPs) and shall comply with the requirements of the NPDES, the Municipal Regional Permit Order R2-2009-0074 (MRP), and the City's stormwater and urban runoff pollution control standards and guidelines (City's Clean Water Program). Permittee shall ensure that all contractors and sub-contractors install and regularly maintain all construction BMPs as required by the approved erosion control plan, the COMC, and the City's Clean Water Program. **(E)**
59. Construction General Permit Compliance: Permittee shall comply with the requirements of the Construction General Permit as administered by the State and Regional Boards. Permittee shall obtain a Construction Activities Storm Water General Permit (State Permit) from the State Board. Prior to any construction activities and prior to the issuance of any building, demolition, or grading permit, Permittee shall submit:
- a. A complete Storm Water Pollution Prevention Plan (SWPPP) with the project Waste Discharge Identification Number (WDID) displayed on the cover;
  - b. A copy of the approved Notice of Intent (NOI) from the State Board; and
  - c. An erosion control plan and a site monitoring plan meeting the satisfaction of the City Engineer.

Permittee shall ensure that all contractors and sub-contractors install and regularly maintain all storm water quality control measures as required by the approved SWPPP, the approved erosion control plan, the COMC, and the City's Clean Water Program.

Prior to final occupancy for any hotel unit or any phases of hotel units, Permittee shall submit an approved Notice of Termination (NOT). For phased occupancy, Permittee shall submit a Change of Information (COI) or an NOT approved by the State Board that removes each phase of occupancy from the boundaries of the State Permit prior to the issuance of occupancy for that phase. Contact the State and Regional Boards for questions regarding your specific project. For general information, contact the City of Milpitas Engineering Division at (408) 586-3329. **(E)**



60. Post-Construction Storm Water Quality: Permittee shall comply with the requirements of the MRP for post-construction storm water treatment (provision C.3 regarding new development and redevelopment requirements for regulated projects) and the City's Clean Water Program. Permittee shall submit a final, certified storm water quality control plan (SWCP), a SWCP sheet, and a post-construction BMP operations and maintenance plan (O&M) in accordance with the City's Clean Water Program and meeting the satisfaction of the City Engineer. (E)
61. Storm Water Quality Control Plan (SWCP): Prior to any building permit issuance, Permittee shall submit a separate final or amended existing SWCP that incorporates post-construction BMPs for the treatment of storm water run off from all areas of the parcels. The SWCP shall incorporate source control, site design, and storm water treatment consistent with the MRP requirements and the City's Clean Water Program.
- a. The SWCP shall comply with all "Model Conditions of Approval for Stormwater Quality" as shown in the Stormwater Section of the Engineering Plans and Map Procedures and Guidelines, dated July 15, 2010 and are hereby incorporated as conditions of project approval.
  - b. The final SWCP shall be certified by a third party reviewer from the MRP approved list of certifiers. The third party reviewer shall certify that the SWCP complies with the MRP requirements. A list of qualified reviewers can be found at the Santa Clara Valley Urban Runoff Pollution Prevention Plan (SCVRPPP) website (<http://www.scvrppp-w2k.com/>)
  - c. O&M Plan: The final SWCP shall include an Operation and Maintenance (O&M) Plan, acceptable to the City Engineer, describing the operation and maintenance procedures needed to insure that storm water treatment measures continue to work as intended and do not create a nuisance (including vector control). The plan shall include all BMP details, a location map, a maintenance schedule, and inspection and reporting templates. The treatment measures shall be maintained for the life of the project. The storm water control operation and maintenance plan shall include the Permittee's signed statement accepting responsibility for maintenance until the responsibility is legally transferred.
  - d. O&M Agreement: Prior to final occupancy for any hotel unit, Permittee shall execute and record an O&M Agreement with the City for the operation, maintenance, and annual inspection of the C.3 treatment facilities. Permittee shall submit documentation of inspection and maintenance to the City's Utility Section annually for reporting to the Regional Board.
  - e. Permittee shall include language in the approved CC&R providing the City with an annual inspection report in conformance with the approved O&M plan and agreement. If the City does not receive the report, the City will conduct the field inspection and report for the site and the Permittee shall be responsible to pay all associated costs.
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- f. Format: The SWCP shall comply with the City's Standard SWCP formatting policy.
- g. All permit applications shall be consistent with the Permittee's final Storm Water Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. Onsite improvement plans shall show the details and methods of construction for site design features, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants. Site design shall limit directly connected impervious areas. Any changes to the final Storm Water Control Plan shall require Site Development Permit Amendment application review.
- h. Storm Water Control Plan Sheet: A plan sheet shall be included in the offsite and onsite improvement plans for Storm Water Control. The sheet will show and label all drainage areas, treatment measures, drainage flow lines, high points, and low points. Each treatment measure shall have an independent drainage area which shall be designated. The sheet will provide sections and details for grading, drainage, and treatment measures. The sheet will include a table correlating the drainage areas to the treatment measures and summarizing the treatment provided.
- i. Storm Water Control Inspection: Prior to initial acceptance of public improvements or initial occupancy for private improvements, the Third Party Certifier of the SWCP shall submit post-construction certification verifying that the post-construction BMPs have been installed correctly and are functioning properly. (E)

## UTILITIES

- 62. Utility Protection: All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. (E)
- 63. Utility Capacity: The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
- 64. Utility Studies: Prior to final map recordation, Permittee shall submit and obtain approval from the City Engineer of the water, sewer, and storm drainage studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is

anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable, to the satisfaction of the City Engineer. (E)

65. Utility Modeling: Hydraulic modeling is required to verify the capacity of the adjacent water and sewer system piping and determine points of connection. Permittee shall authorize the City to proceed with hydraulic modeling and the costs of the modeling shall be charged to Applicant's PJ Account. (E)

66. Sanitary Sewer Discharge: Prior to any discharge into the sanitary sewer system, Permittee shall obtain all required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 277-2755. (E)

67. Landscaping Ordinance 238: In accordance with the provisions of Chapter 5, Title VIII (Ordinance 238) of the COMC for new or rehabilitated landscaping areas equaling 2500 square feet or greater, the Permittee shall:

- a. Provide separate water meters for domestic water service & irrigation service.
- b. Comply with all the requirements of Ordinance 238, as amended.
- c. Submit two sets of landscape and irrigation improvement plans to the Building Division with the building permit plan check package. Prior to any building permit issuance, approval from the Land Development Section of the Engineering Division is required prior to any building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)

## **SOLID WASTE MANAGEMENT & RECYCLING**

68. Solid Waste Handling Plan (Report): Prior to any building permit issuance,, Permittee shall submit a final Solid Waste Handling Plan that incorporates the following solid waste handling requirements and meeting the satisfaction of the City Engineer:

- a. A description of the Solid Waste Services required for the development per the Development Guidelines for Solid Waste Services (Development Guidelines). The description shall include sizing calculations, type of service (front load bins, roll-off compactors, etc.), size of bins, and level of service (e.g. number of pick ups per week).
- b. A description of the Solid Waste Operation at ultimate build out and for each phase of the development.
- c. A detail of the solid waste enclosure designed per the Development Guidelines for Solid Waste Services to house all service described above and all necessary equipment. The enclosure design shall provide adequate access for the solid waste truck, and allocate enough space for the solid waste truck operation without

- impacting the proposed private street. The access to the location and size of the enclosure shall be designed to the City Engineer's satisfaction and shown on the plans prior to any building permit issuance.
- d. A solid waste handling plan sheet shall be incorporated in the site improvement plan set containing the enclosure detail, a sizing table, a service table, a description of the solid waste operations, and truck turning templates for collection vehicles.
  - e. The enclosure drains shall discharge to the sanitary sewer line. Storm drain inlets shall be located at least 25 feet away from enclosures to prevent accidental spills from entering storm drains. Enclosures are not permitted within public utility easements.
  - f. The Property Management Association (PMA) or Permittee shall be responsible for solid waste handling. The Solid Waste Handling Plan shall include detailed, step-by-step instructions describing the management of solid waste from generation to disposal. The plan shall demonstrate how recycling and waste will be separately handled and maintained.
  - g. Permittee shall complete the construction of the new trash enclosure to serve the Project prior to issuance of the First Certificate of Occupancy. (E)
69. Solid Waste Management: Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, Permittee shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, Permittee shall subscribe to and pay for solid waste services rendered. Prior to issuance of any certificate of occupancy, Permittee shall provide evidence to the City that a sufficient level of trash and recycling service has been secured using a Service Agreement with Republic Services (formally BFI). After Permittee has full occupancy, Permittee shall contact the Republic Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, Permittee shall increase the service to the level determined by the evaluation. (E)
70. Recycling Report, Part I: Prior to demolition permit issuance, Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's Utility Engineering and Solid Waste Section (Utility Section) prior to demolition permit issuance. The report shall describe the following resource recovery activities:
- a. What materials will be salvaged?
  - b. How materials will be processed during demolition?
  - c. Intended locations or businesses for reuse or recycling.
  - d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

Permittee's contractor shall make every effort to salvage materials for reuse and recycling. (E)

71. Recycling Report, Part II: Prior to final approval of the demolition permit or any building permit issuance, whichever occurs first, Permittee shall submit Part II of the Recycling Report to the Building Division for forwarding to the Utility Section in order to confirm the information described on Part I of the Recycling Report, especially materials generated and actual quantities of recycled materials. Part II of the Recycling Report shall be supported by copies of weight tags and receipts of “end dumps.” Actual reuse, recycling, and disposal tonnage amounts (and estimates for “end dumps”) shall be submitted to the Building Division for approval by the Utility Section prior to inspection by the Building Division. **(E)**
72. Demolished Material Removal: All demolished materials including, but not limited to, broken concrete, asphalt paving, pipe, vegetation, excess earth, building debris, and other unsuitable materials, etc., shall be removed from the job site for recycling or disposal by Permittee’s contractor, to the satisfaction of the City Engineer. Permittee’s contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction of the site. Permittee’s contractor shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. Permittee’s contractor shall perform all recycling and/or disposal by removal from the job site. **(E)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney

(PD) = Police Department